

Message Text

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ACTION EUR-25

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TO SECSTATE WASHDC IMMEDIATE 3928

AMEMBASSY BONN IMMEDIATE

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L BERLIN 1543

E.O. 11652: GDS

TAGS: PGOV, GW, GE

SUBJECT: BRUECKMANN -- PROPOSED LEGISLATIVE SOLUTION

REF: A) BONN 14104 B) BERLIN 1481; C) BERLIN 1451

1. EMBASSY UNDERSTANDING PARA 6 REF A IS CORRECT. SENAT HAS TRIED AND FAILED TO REVERSE KAMMERGERICHT DECISION ORDERING BRUECKMANN'S EXTRADITION TO GDR. IT HAS NO FURTHER GROUNDS TO ACT UNDER TERMS OF 1953 LAW AND NO POLITICAL LEVERAGE TO USE ON COURT. KAMMERGERICHT THEORETICALLY COULD REVERSE ITSELF, BUT IT HAS HAD NUMEROUS OPPORTUNITIES, PARTICULARLY AFTER STRASSBOURG HUMAN RIGHTS COMMISSION ANNOUNCED IT WAS ACCEPTING CASE, AND IT HAS REFUSED TO TAKE ADVANTAGE OF THEM. LIKEWISE, DEFENSE APPEARS TO HAVE NO FURTHER LEGAL WEAPONS AVAILABLE. KAMMERGERICHT HAS ALREADY REJECTED APPROXIMATELY HALF-DOZEN APPLICATIONS FOR GIRL'S RELEASE BASED ON CLAIMS OF ILL HEALTH, OVERLY LONG DETENTION, ETC. WE SEE NO INDICATION COURT WILL TAKE NEW POSITION. IN SHORT, WITHOUT
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INTRODUCTION OF NEW ELEMENT, GIRL WILL REMAIN IN JAIL UNTIL

SUCH TIME AS STRASBOURG PROCEEDINGS HAVE ENDED. THEN,
UNLESS STRASBOURG HOLDS THAT, IN EFFECT, SHE COULD NOT GET
FAIR TRIAL IN GDR, SHE WILL BE RETURNED TO GDR.

2. SINCE ALL GERMAN OBSERVERS HAVE MADE ABUNDANTLY CLEAR
IT IS NOT POLITICALLY ACCEPTABLE FOR GIRL TO GO BACK,
QUESTION IS WHAT NEW ELEMENT CAN BE INTRODUCED. WE SUBSCRIBE
FULLY TO REASONING FRG SET OUT PARAS 3-4 REF A AS TO WHY
TWO POSSIBILITIES FAVORED BY UK ARE INAPPROPRIATE. ON OTHER
HAND, FRG LEGISLATIVE PROPOSAL OFFERS ACCEPTABLE WAY OUT OF
BOX SINCE IT WOULD PERMIT LOCAL BERLIN AUTHORITIES TO RESOLVE
AFFAIR WITHOUT REFERENCE TO FEDERAL COURTS AND WITHOUT
ACKNOWLEDGEMENT OF FEDERAL CONSTITUTIONAL COURT DECISION.
IT WOULD ALSO PERMIT ALLIES TO REMAIN ENTIRELY CLEAR OF AFFAIR
SINCE WE WOULD NEED DO NO MORE THAN
GIVE TACIT NOD TO FRG IN BONN GROUP AND STAND ASIDE WHILE
BERLIN HOUSE OF REPRESENTATIVES TAKES OVER LEGISLATION BY
ROUTINE MANTELGESETZ AND BERLIN STAATSANWALT THEN USES HIS
DISCRETIONARY AUTHORITY TO REVERSE EXTRADITION DECISION.

3. TO CLEAR UP ONE POINT: THERE IS NO AVENUE OPEN TO
DEFENSE TO OBTAIN BRUECKMANN'S RELEASE ON ALLEGED VIOLATION OF
LAW RESULTING FROM FACT THAT BRUECKMANN HAS ALREADY BEEN
HELD IN CUSTODY FOR MORE THAN SIX MONTHS. HER
LAWYERS HAVE ALREADY MADE SUCH A PLEA TO KAMMERGERICHT, WHICH
REJECTED IT, POINTING OUT THAT THE SIX-MONTH RULE APPLIES
ONLY TO DETENTIONS BASED ON CHARGES BROUGHT BY WEST BERLIN
OR FRG AUTHORITIES IN CONNECTION WITH OFFENSE TO BE TRIED
IN WEST BERLIN OR FRG. BRUECKMANN IS DETAINED ON BASIS OF
GDR ARREST ORDER WHICH HAS BEEN EXPRESSLY CONFIRMED BY
KAMMERGERICHT AND WHICH IS NOT SUBJECT TO SIX-MONTH RULE.
AS EXPLAINED REF C, IF FRG PROPOSAL IS ENACTED INTO LAW,
BERLIN STAATSANWALT WILL DISSOLVE DECISION CONFIRMING
BRUECKMANN'S DETENTION ON BASIS OF GDR ARREST ORDER. HE
WILL THEN MOVE FOR HER IMMEDIATE REARREST ON BASIS OF
WEST BERLIN ORDER, AND SENAT WILL HAVE SIX MONTHS TO PREPARE
CASE FOR TRIAL IN WEST BERLIN. OF COURSE ONCE GDR DETENTION
ORDER IS SET ASIDE AND GIRL IS PREPARED FOR TRIAL IN
WEST BERLIN, BASIS FOR STRASBOURG INVOLVEMENT WILL CEASE AND
CASE WILL BE RESOLVED COMPLETELY IN WEST BERLIN. SELIGMANN
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